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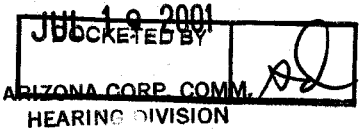
Arizona Corporation Commission

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Attorneys for Respondent Garreth N. Patton

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

In the Matter of:

CALUMET SLAG, INC.

GARRETH N. PATTON

JEFFREY G. CRAWFORD

MATTHEW E. HUNZINGER

Respondents.

5-03361A-00-0000

DOCKET NO. ~~S-03384A-99-0000~~

**PATTON'S EXCEPTIONS TO
RECOMMENDATION OF
ADMINISTRATIVE LAW JUDGE**

Pursuant to AAC R14-3-110(B), Respondent Garreth N. Patton (Patton) hereby files his exceptions to the Recommendation.

INTRODUCTION

The Securities Division (Division) has over-charged and over-prosecuted Patton, while allowing the main perpetrators of the failed Calumet Slag stock offering to go free, without any order, penalty or sanction. The Division used the selective naming of Respondents and selective presentation of evidence to achieve this unfortunate result.

The evidence at the hearing proved:

1. The slag pile at issue is worth between \$300,000.00 and \$2,300,000.00;

2. Calumet Slag, Inc. (CSI), through its current operators Joe Atkins (Atkins) and Joe Hurley (Hurley) orchestrated the sales of Patton's stock. CSI issued this stock to Patton in exchange for the slag pile;
3. Patton spent at least \$350,000.00 of the \$400,000.00 to \$450,000.00 raised by the sale of this stock for the benefit of CSI; and
4. Patton sold stock to about 30 of the 180 or so CSI investors. Most of the sales were made by Atkins, Hurley, a stockbroker named Ron Delmanowski (Delmanowski), and an investor / salesman named Sulieman Hawash (Hawash).
None of these people were named as respondents in this matter.

The Division, like the Respondents, must live with the decisions it makes. In this case, it decided to cast its lot with Messrs. Atkins, Hurley and Delmanowski. It chose to allow these men to escape being named as respondents in this case, despite overwhelming proof that these men made **dozens of sales of unregistered securities**. The Division allowed CSI to consent to an order without having to pay any fines, penalties or restitution. To assess a harsher sanction on Patton, who in many ways was a victim of these men's actions, would reek of unfairness and injustice.

1. The Slag Pile is Worth Between \$300,000.00 and \$2,300,000.00.

Patton and his family have owned the subject property in the Black Hills of South Dakota since 1923. **p. 310**. This property includes land, mineral rights and a 5000 ton slag pile. **pp. 310-312**. This slag pile, which is made up of the remains of various mining projects over the years, contains gold, silver, nickel, cobalt, lead, zinc and other metals. **p. 312**.

Patton is 37 years old, and is married with three sons, ages 10, 8 and 1. His middle son has cerebral palsy. He has a GED education and works as an excavator. **pp. 308-310**. He met Atkins in about 1991 when Patton was digging swimming pools in Phoenix. **p. 313**.

...

...

1 Atkins formed CSI with 32 "incorporators", most of whom were Atkins' friends. CSI
2 issued Patton 750,000 of 1,000,000 authorized shares of CSI stock in exchange for the slag
3 pile. **pp. 313-314.**

4 If the slag pile was simply sold for asphalt, it would be worth about \$65.00 per ton, for
5 a total value of more than \$300,000.00. **p. 315.** Patton produced several assays and analyses at
6 the hearing. **Exhibits R-5, 6, 7, 8, 9, 10 and 12.** Over the years dozen of such reports were
7 prepared. If these reports, which were made throughout the 1990s, are averaged out, the value
8 of the slag pile could be worth as much as \$2,300,000.00. **p. 316.**

9 In a February 1999 memo from an active shareholder named David Wastchak to, among
10 others, Atkins and Division witnesses Hawash and Foley, the value of slag pile was
11 "guesstimated" at \$2,475,000.00. This figure, which is characterized by Wastchak as
12 "realistic" and "conservative", is based on the gold and silver contained in the pile. **Exhibit**
13 **R-9.**

14 The Division based its entire case on just one report, from late 1994, that made negative
15 conclusions about the slag pile. Patton presented several reports at the hearing, which had
16 varying conclusions. This is to be expected since the pile is that result of difference mining
17 projects, using different mining technologies, over several decades.

18 It is misleading and unfair to cherry pick one discouraging assay, out of many, and
19 argue that this assay reflects the true value of the slag pile. But that is precisely what the
20 Division has done in this case.

21 **2. Calumet Slag, Inc. (CSI), through its current operators Atkins and Hurley,**
22 **orchestrated the sales of Patton's stock.**

23 At the Open Meeting held on October 4, 2000 the Division recommended that the
24 Commission approve a consent order with CSI that did not include an order of restitution, and
25 did **not** impose any fines or penalties. The Division told the Commission that the current
26 ...

1 operators of CSI were not involved in the wrongdoing alleged in the Notice. That statement
2 was not true.

3 In fact, Atkins told Patton to sell Patton's CSI stock to fund the company's operations.

4 **p. 316.** As previously described, CSI issued Patton 750,000 of the 1,000,000 authorized shares
5 of CSI stock, in exchange for the slag pile. The remaining 250,000 shares were sold by Atkins.

6 **p. 314.** Atkins and Hurley raised other money for CSI as well. **pp. 324-325.** Division witness
7 Foley was solicited to purchase Patton's stock by Hurley. Foley never even spoke to Patton
8 before he invested. **pp. 227-229.**

9 **3. Patton spent at least \$350,000.00 of the \$400,000.00 to \$450,000.00 raised by**
10 **the sale of this stock for the benefit of CSI.**

11 The Division's CPA testified that about \$450,000.00 of proceeds from the sales of CSI
12 stock was deposited in Patton's account. However, he did not know the use of that money.

13 Q. (BY MR. SALCIDO) How much money that was deposited into Mr. Patton's
14 account was used for the benefit of Calumet Slag?

15 A. I have no exact figures.

16 Q. And why not? You have the raw materials, don't you?

17 A I have the deposits and offsets. I reviewed as a whole the flow of the funds
18 going through and was able to determine that there were instances where the
19 investor funds were used to pay some of his personal expenses, and at the same
20 time I was able to find or determine there were a few instances of the payments
21 that were made on behalf of Calumet Slag.

22 Q. Now, Mr. Palfai characterized it as minor portion, didn't he?

23 A. I believe the attorney was paid about \$60,000, and their dumping was around 10,
24 \$12,000.

25 Q. So if you can't tell me how much money in this account was used for business
26 expenses, you also can't tell me how much was used for personal, can you?

1 A. As a whole, no, I cannot. **pp. 292-293.**

2 The Consent Order entered into by Atkins and Hurley, on behalf of CSI, stated that CSI
3 “derived only a fractional benefit from the monies raised through the Representatives’ sale of
4 CALUMET stock.” It also stated that CSI “received little, if any, of these funds.” Both
5 statements are untrue.

6 In fact, Patton used over \$350,000.00 of the money raised from the sale of his stock for
7 the benefit of CSI. He testified that he paid the following expenses for the benefit of CSI:

8	M&W Milling and Refining	\$ 75,000.00
	Nizer, Inc.	80,000.00
9	Legal fees	20,000.00
	Don Rise / Jerry Wagner	110,000.00
10	Bahamian Refining	<u>70,000.00</u>
11	TOTAL	\$355,000.00

12 In October 2000 the treasurer of CSI sent a letter and ledger stating the Patton has paid
13 more than \$109,000.00 of CSI’s expenses. He stated, “I am sure that he (Patton) has incurred
14 more than the amount shown but I do not have any support to substantiate these purchases.”
15 He also stated that a CSI balance sheet dated June 25, 1996 shows and outstanding liability to
16 Patton of more than \$184,000.00. **Exhibits R-1, R-13.**

17 Patton had no job, other than CSI, from 1994 to 1998. Patton received \$400,000 -
18 450,000 from the sale of his stock. From that he paid more than \$350,000 for CSI expenses.
19 He used the difference to support his family for those years. **p. 339.** As can be seen, Patton
20 hardly lived a life of luxury at investor expense.

21 **4. Patton sold stock to only about 30 of the 180 or so investors.**

22 Division investigator Meg Pollard testified that about 180 people purchased CSI stock.
23 However, she did not know how many of those investors spoke with Patton before they
24 invested.

25 ...

26 ...

1 Q. (BY MR. SALCIDO) I'm just asking how many of these people spoke with
2 Patton before they made their first investment. Do you have that answer as you
3 sit here?

4 A. No, I guess I do not. p. 285.

5 In fact, Patton only spoke to about 30 investors. p. 325.

6 Atkins and Hurley sold stock to more than 50 investors. p. 325. Respondent Crawford
7 and his father in law Delmanowski sold stock to more than 70 investors. p. 327. Hawash, a
8 Division witness, made sales to more than 12 investors. p. 327.

9 The Division's own witnesses support the fact that Patton was not an active salesman.
10 Hawash first learned about this investment from his stockbroker, Delmanowski, and
11 Delmanowski's wife Joyce. pp. 19, 62-63. Hawash testified that Atkins was "looking for
12 another investors (sic)" between September 1994 and November 1997. pp. 78-79. He testified
13 that Atkins hosted potential investors at Atkins' home, showed them a videotape about the slag
14 pile, and "explained" the slag pile to them. In fact, Hawash made additional investments after
15 this presentation at Atkins' home. pp. 80-81. Hawash admitted that he solicited 2 investors.
16 pp. 81-82.

17 Division witness Hagen learned about the investment from Ron Delmanowski's wife.
18 Hagen was given various assay reports to review. pp. 114-116.

19 Division witness Overhamm learned about the investment from Ron Delmanowski's
20 wife, and was given assays to review. pp. 176-177. Overhamm testified that the "only reason I
21 went along with it (the investment) is because there was a financial advisor (Delmanowski)
22 present who condoned it." p. 186.

23 Q. (BY MR. SALCIDO) You wouldn't have invested if Mr. Delmanowski had not
24 been there, would you?

25 A. Absolutely I would not have. He lent the credence to it and that supported our
26 judgment. p. 187.

1 Division witness Foley was solicited by Hurley and never even spoke to Patton before
2 investing. **pp. 227-229.**

3 CONCLUSION

4 Patton only dealt with about 30 investors. He disclosed to them the assay reports that
5 he had. He disclosed to them that the stock sold to them was Patton's own stock, and that the
6 money was being paid to Patton. He disclosed to them the lawsuit, lien and settlement.
7 **pp. 336-337.**

8 The old saying goes "follow the money". That is usually good advice when it comes to
9 financial investigations. However, in this case, the Division just "followed the money" to
10 Patton's account and then stopped "following". Had it continued to follow the money, as it
11 should have, the Division would have seen that most of the money was used for the benefit of
12 CSI. Instead, it assumed that Patton used investor money for his own fun and frolic.

13 Had the Division spoken to Patton or the other CSI principals, as it should have, it
14 would have seen that the sales of CSI stock were done at the direction of Atkins and Hurley,
15 and that most of the sales were actually made by Atkins, Hurley, Crawford, Delmanowski and
16 Hawash. Instead, it assumed that Patton was the mastermind of a sophisticated securities fraud
17 scheme.

18 Had the Division considered the many assay reports easily obtainable, it would have
19 seen that the reports are all over the board. This is to be expected, given the various sources of
20 the slag pile. Instead, it seized upon a single negative report and assumed that this report
21 represented the true value of the slag pile.

22 In short, the Division has gone overboard against a minor player in this sorry affair.
23 The major players, Atkins, Hurley and registered stockbroker Delmanowski, remain untouched.
24 Atkins and Hurley now run CSI, a company that owns a slag pile that may be quite valuable.
25 This Commission continues to labor under the false impression that all the "bad guys" have left
26 CSI and that the "good guys" are now running the show.

1 Patton was instructed by Atkins and Hurley to sell his CSI shares, which he did. He
2 was told by Atkins and Hurley to use the money raised therefrom for CSI's benefit, which he
3 did. Today, Patton has less than 5% of the CSI stock he was issued in exchange for the slag
4 pile that had been in Patton's family for almost 80 years.

5 Patton no longer has the slag pile. He no longer has his CSI stock. He did not enjoy the
6 \$400,000 - 450,000 raised from the sale of his stock. Instead, CSI has the slag pile, and CSI
7 enjoyed the benefit of the hundreds of thousands of dollars raised from the sale of Patton's CSI
8 stock.

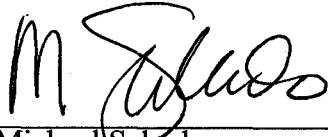
9 Yet, the Division allowed CSI to consent to an Order that did not require restitution, or
10 impose a fine or penalty. The Division allowed Atkins, Hurley and Delmanowski, who sold
11 most of the CSI stock, to go free. Now, recommendation requires Patton to pay almost
12 \$450,000.00 to investors, and penalties of \$40,000.00 who continue to hold CSI stock. This is
13 patently unjust and unfair.

14 Any Order issued against Patton should be, at the most, less onerous than that issued, by
15 consent, to CSI. The Order should not include restitution, fines or penalties.

16 People must be treated equitably under the law.

17 **RESPECTFULLY SUBMITTED:** July 19, 2001.

18 GUST ROSENFELD P.L.C.

19 By 
20 Michael Salcido
21 Attorneys for Respondent
22

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